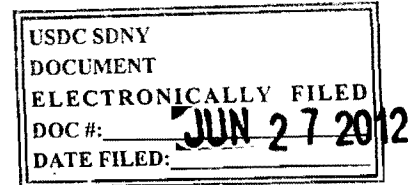


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHAMPAGNE SMITH,

Plaintiff,

-against-

HAROLD GRAHAM,

Defendant.

10 Civ. 3450 (JPO) (THK)

ORDER ADOPTING  
REPORT AND  
RECOMMENDATION

J. PAUL OETKEN, District Judge:

Champagne Smith ("Petitioner") was convicted in New York State Supreme Court, New York County of Murder in the Second Degree, in violation of N.Y. Penal Law § 125.25(1), and Possession of a Weapon in the Second and Third Degrees, in violation of N.Y. Penal Law §§ 265.03(2), 265.02(4). Petitioner was sentenced to an indeterminate sentence of twenty-five years to life imprisonment for the murder conviction, and concurrent terms of imprisonment of fifteen and seven years in prison for the weapons charge. Following a direct appeal, the New York Supreme Court, Appellate Division, First Department, affirmed Petitioner's conviction on December 18, 2008. *People v. Smith*, 57 A.D.3d 356, 869 N.Y.S.2d 88 (1<sup>st</sup> Dep't 2008), leave to appeal denied, 12 N.Y.3d 821, 881 N.Y.S.2d 29 (2009).

On April 26, 2010, Petitioner filed a petition for a Writ of Habeas Corpus ("Petition") pursuant to 28 U.S.C. § 2254, challenging his conviction. (Dkt. No. 2.) The case was referred to the Honorable Theodore H. Katz for a Report and Recommendation ("R & R"). (Dkt. No. 3.) On May 7, 2012, Magistrate Judge Katz issued a thorough R & R, recommending that this Court dismiss the Petition in its entirety. (Dkt. No. 18.) Petitioner has not filed any objections to the R & R, and the time to do so has expired.

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When no objections are filed, the Court reviews a R & R on a dispositive motion for clear error. *See, e.g., Andrews v. LeClaire*, 709 F. Supp.2d 269, 271 (S.D.N.Y. 2010).


The Court has reviewed the R & R and the Petition, and finding no error, clear or otherwise, adopts the R & R in its entirety. Accordingly, the petition is denied.

As Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, *see* 28 U.S.C. § 2253(c)(2), and the Court certifies, pursuant to 28 U.S.C. § 1915(a) (3), that any appeal from this Order would not be taken in good faith.

The Clerk of the Court is directed to enter judgment dismissing the case.

SO ORDERED.

Dated: New York, New York  
June 26, 2012

  
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J. PAUL OETKEN  
United States District Judge